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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

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9 MARK FITHIAN,

10 Plaintiff,

11 v.

12 STATE OF NEVADA; et al.,

13 Defendants.

2:12-cv-0959-LRH-VCF

ORDER

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15 Before the court are defendant the Las Vegas Metropolitan Police Department's
16 ("LVMPD") motion to dismiss (Doc. #7) and defendant Nevada Department of Corrections's
17 ("NDOC") motion to dismiss (Doc. #14). Plaintiff Mark Fithian ("Fithian") filed oppositions to the
18 motions to dismiss along with a request to file an amended complaint. Doc. ##10, 17.

19 **I. Facts and Procedural History**

20 On or about May 17, 2010, plaintiff Fithian was arrested and booked into the Clark County
21 Detention Center ("CCDC"). On July 10, 2010, Fithian was transferred to High Desert State Prison
22 ("HDSP"). Within two days after his transfer to HDSP, Fithian allegedly tested positive for
23 Tuberculosis exposure.

24 Subsequently, Fithian filed a complaint against defendants alleging several state law causes
25 of action as well as two Section 1983 civil rights claims. Doc. #1, Exhibit A. Thereafter, defendants
26 filed the present motions to dismiss. Doc. ##7, 14.

1 **II. Discussion**

2 In their motion, defendants contend that plaintiff Fithian has failed to sufficiently allege his
3 Section 1983 claims because he has failed to identify any underlying constitutional right or federal
4 statutory right that defendants violated. *See* Doc. ##7, 14.

5 The court has reviewed the documents and pleadings on file in this matter and agrees that
6 the complaint fails to sufficiently allege a claim under 42 U.S.C. § 1983. To prevail on a claim
7 brought under 42 U.S.C. § 1983, a plaintiff must allege that the defendant (1) while acting under
8 color of state law (2) subjected any person to the deprivation of any rights, privileges, or
9 immunities secured by the Constitution and laws of the United States. *Anderson v. Warner*, 451
10 F.3d 1063, 1067 (9th Cir. 2006). In his complaint, Fithian fails to clearly identify the underlying
11 constitutional right or federal statutory right that forms the basis of his Section 1983 claims. Rather,
12 Fithian simply states that his rights were generally violated when he contacted Tuberculosis while
13 in defendants' custody. Such allegations are insufficient to state a claim for relief and the court
14 shall grant defendants' motions to dismiss accordingly.

15 However, because Fithian has requested leave to amend his complaint, and the court finds
16 that defendants would not be prejudiced by amendment, the court shall grant him leave to file an
17 amended complaint that addresses the identified pleading defects.

18 IT IS THEREFORE ORDERED that defendants' motions to dismiss (Doc. ##7, 14) are
19 GRANTED. Plaintiff's complaint (Doc. #1, Exhibit A) is DISMISSED in its entirety.

20 IT IS FURTHER ORDERED that plaintiff Mark Fithian shall have thirty (30) days from
21 entry of this order to file an amended complaint in accordance with this order.

22 DATED this 28th day of January, 2013.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE